



POLICE DEPARTMENT

The  
City  
of  
New York

In the Matter of the Disciplinary Proceedings :

- against - : FINAL

Sergeant Jacob Solorzano : ORDER

Tax Registry No. 903306 : OF

Fleet Services Division : DISMISSAL

Sergeant Jacob Solorzano, Tax Registry No. 903306, Shield No. 3447, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2011-6116 as set forth on form P.D. 468-121, dated November 7, 2011, and after a review of the entire record, Respondent has been found Guilty of Specification Nos. 1, 2, 3, and 4 and Not Guilty of Specification No. 5.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Sergeant Jacob Solorzano from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

RAYMOND W. KELLY  
POLICE COMMISSIONER

EFFECTIVE: On September 20, 2013 @1300Hrs.



POLICE DEPARTMENT

September 17, 2013

In the Matter of the Charges and Specifications : Case No. 2011-6116

- against - :

Sergeant Jacob Solorzano :

Tax Registry No. 903306 :

Fleet Services Division :

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Amy J. Porter  
Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Vivan Joo, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: Roger S. Blank, Esq.  
373 Park Avenue South – 6<sup>th</sup> Floor  
New York, New York 10016

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

The above-named member of the Department was the subject of a trial conducted on September 3, September 4, September 9, and September 10, 2013. Respondent was charged with the following:

1. Said Sergeant Jacob Solorzano, while assigned to the 40th Precinct, while on-duty, on or about October 16, 2009, at a location known to the Department, in Bronx County, being a public servant, with the intent to obtain a benefit or deprive another person of a benefit, did commit an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was unauthorized, and in furtherance of said misconduct, said public servant knowingly refrained from performing a duty which was imposed upon him by law or clearly inherent in the nature of his office.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT  
NYS Penal Law Section 195.00 (1) & (2) – OFFICIAL MISCONDUCT

2. Said Sergeant Jacob Solorzano, while assigned to the 40th Precinct, while on-duty, on or about October 16, 2009, at a location known to the Department, in Bronx County, while acting in concert with Police Officer Jose Ramos, did steal property having a value of more than three thousand dollars, that being United States Currency.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT  
NYS Penal Law Section 155.35 – GRAND LARCENY IN THE THIRD DEGREE

3. Said Sergeant Jacob Solorzano, while assigned to the 40th Precinct, while on-duty, on or about and between August 11, 2009 and October 28, 2011, on multiple occasions [*sic*], knowing that Police Officer Jose Ramos was involved in ongoing serious misconduct and/or corruption, did fail to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1 – ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT AGAINST MEMBERS OF THE SERVICE

4. Said Sergeant Jacob Solorzano, while assigned to the 40th Precinct, on or about August 11, 2009, in Bronx County, while acting in concert with Police Officer Jose Ramos, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: after arresting an individual who possessed a quantity of marijuana, said Sergeant threw the marijuana from the window of an RMP.

P.G. 203-10, Page 1, Paragraph 5    PUBLIC CONTACT- PROHIBITED CONDUCT  
NYS Penal Law Section 195.05    OBSTRUCTION OF GOVERNMENTAL ADMINISTRATION

5. Said Sergeant Jacob Solorzano, while assigned to the 40th Precinct, on or about August 11, 2009, in Bronx County, while acting in concert with Police Officer Jose Ramos, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: after arresting an individual who possessed a quantity of marijuana, said Sergeant attempted to discard the marijuana.

P.G. 203-10, Page 1, Paragraph 5    PUBLIC CONTACT- PROHIBITED CONDUCT  
NYS Penal Law Section 110/215.40 (2) – ATTEMPTED TAMPERING WITH PHYSICAL EVIDENCE

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by Roger Blank, Esq. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

#### DECISION

Respondent is found Guilty of Specification Nos. 1, 2, 3, and 4 and Not Guilty of Specification No. 5.

#### Introduction: Determination to conduct a disciplinary trial in Respondent's absence

On August 27, 2013, the Department informed the Deputy Commissioner of Trials that Respondent's case had to go forward within 30 days. Respondent's counsel objected to the Department's request. The Department Advocate (Advocate) explained why the case had to go forward with haste: A pending case in the District Attorney's (DA's) office had the same charges against Respondent as the Department's charges.

The DA requested that the Department not use their witnesses and had only recently released these witnesses. On September 23, 2013, Respondent will have been a member of the Department for 20 years and will be able to retire with a full service pension.

Respondent was present on August 27, 2013, when the Deputy Commissioner of Trials set Respondent's trial for Monday, September 3, 2013 for 9:00 a.m. The Deputy Commissioner of Trials held that the trial had to commence immediately because of Respondent's retirement date.

On August 28, 2013, Respondent filed his papers for retirement. Over the weekend, Respondent checked himself into a Department [REDACTED] for a claimed [REDACTED]. This [REDACTED] program lasts for 30 days. The morning of trial, on September 3, 2013, Respondent was not available.

The rules governing the adjudication of disciplinary charges provide that:

If the respondent fails to appear at the Hearing personally or by authorized representative, without good cause, the Deputy Commissioner of Trials may conduct a Hearing in the respondent's absence. If the respondent does not appear, the Deputy Commissioner of Trials shall determine whether to hold an Inquest Hearing or proceed upon written submission of the parties.<sup>1</sup>

The Department Advocate's Office delayed presenting its case until Respondent's attorney was able to contact Respondent. When Respondent's attorney did reach Respondent, he conveyed to Respondent the Advocate's request that he either come to court or withdraw his retirement papers. Respondent declined to do either.

Before and during this hearing, Respondent's attorney objected to the trial proceeding without Respondent present. However, Respondent's attorney voluntarily agreed to represent Respondent. Respondent's attorney fully participated in the hearing

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<sup>1</sup> 38 RCNY §15-04(d).

by cross examining every Department witness and calling two witnesses on Respondent's behalf.

Respondent's attorney argued that this case should be adjourned because Respondent was unable to leave the [REDACTED] needed medical treatment and was currently [REDACTED] so that he could not assist in his own defense. When asked to provide the details of Respondent's medical condition or the medication he was taking, Respondent's attorney did not provide them, citing HIPPA confidentiality regulations.

In any event, even if Respondent did have a medical condition rendering him unable to attend trial, Respondent's having filed his retirement papers before entering the [REDACTED] set in motion the 30 day time period at the end of which he would be retired. Respondent's unwillingness to withdraw his retirement papers gave the Department and this Court no choice but to proceed with the trial in his absence.

#### SUMMARY OF EVIDENCE PRESENTED

##### The Department's Case

The Department called Detective Vincent Thompson, Undercover 5032, Police Officer Julia Gillen, Police Officer Armando Sanchez, Sergeant Robert Rios, Person A, and Sergeant Bryan Brooks as witnesses.

##### Detective Vincent Thompson

Thompson, an 18-year member of the Department, is currently, and has been for the past ten years, assigned to the Internal Affairs Bureau (IAB), Group 52, Integrity Testing Unit. On October 16, 2009, he participated in a targeted integrity test of Police

Officer Ramos. For the integrity test, Thompson was the tech officer, which means he was assigned to videotaping and recording the undercover and the subject on Exterior Street in the Bronx.

On October 16, 2009, the surveillance started at 6:45 a.m. and ended at 8:45 a.m. During the surveillance, Thompson was in a vehicle with Sergeant Torres, the driver, as Thompson videotaped the integrity test.

During the integrity test, Thompson saw Undercover (UC) 5032 interacting with Ramos, Respondent and the confidential informant (CI). Thompson videotaped and recorded the events of the integrity test, which was converted into a compact disc (CD) (Department's Exhibit [DX] 1).

On voir dire examination, Thompson testified that although he did not convert the videotape into the CD, there should not be any difference between the two. The CD that Thompson viewed accurately represented the videotape that he filmed.

On direct examination, Thompson testified that DX 1 fairly and accurately represented the videotape of what he observed on October 16, 2009, on Exterior Street.

On cross-examination, Thompson testified that the surveillance ended at about 8:25 a.m. rather than 8:45 a.m. At 8:10 a.m., Thompson observed Ramos and the CI at a gas station. Thompson did not recall whether Respondent was present during that time period when the pre-recorded buy money was being split between Ramos and the CI.

Undercover Officer 5032 (UC 5032)

UC 5032, a nine-year member of the Department, is currently assigned to IAB in an undercover capacity. On October 16, 2009, as a UC with IAB, he was assigned to conduct a targeted integrity test of Ramos, who was assigned to the 40 Precinct.

UC 5032 explained the background to the integrity test. The CI told Ramos that he knew a man, who in the past had purchased stolen electronics from him, and who was again interested in buying stolen electronics from him for “a large amount of cash.” Ramos and the CI agreed that he was going to meet this man on Exterior Street in the Bronx, at about 7:15 a.m., on October 16, 2009, for the exchange of stolen merchandise for \$30,500.00, which the man would be carrying in a bag. According to the plan, on the above date and time, Ramos agreed to be near Exterior Street with his partner in a marked radio motor patrol car (RMP). As the man exited his vehicle, he approached the open trunk of the CI’s vehicle and dropped the bag of cash into the trunk. At this point, Ramos and his partner would drive up “and make...a police stop.” Then the man was “going to get so scared he’s going to deny everything, he’s going to deny knowing anything about the money, he’s going to deny knowing me [sic] and he just wants to leave the scene because he doesn’t want to get locked up.” To make the police stop appear real, Ramos arranged with the CI to simulate an arrest of the CI in front of the man, so that the man would “wash [his] hands from the whole thing” and leave without the money. Ramos “was just looking to get his hands on the money at the time.” Unbeknownst to Ramos and his partner, UC 5032 would play the role of this man.

The integrity test occurred on October 16, 2009, as planned. UC 5032 testified about what he observed that day and what he observed on the video surveillance of the integrity test (DX 1). An audio recording, based on the covert device that UC 5032 was wearing on the day of the test, was admitted as DX 2. A transcript of the audio recording was admitted as DX 2A.

UC 5032 testified that on October 16, 2009, he arrived on Exterior Street, approximately three blocks from Walton Street, in the Bronx, at about "7, 7:15" a.m. UC 5032 was driving a black Escalade, and as he arrived at the location, he saw a marked RMP, number 4561, to his left and double parked. The CI's vehicle was a BMW 6 series, which was parked on the right side of Exterior Street. UC 5032 parked his vehicle behind the CI's, exited the vehicle with a bag filled with pre-recorded buy money in the sum of \$30,500.00, and approached the open trunk of the CI's BMW. As soon as he dropped the bag of cash into the open trunk, Ramos and Respondent drove up in the RMP and approached UC 5032 and the CI.

UC 5032 immediately identified Respondent as "a uniformed member of the service ... as the sergeant on the job, as Sergeant Solorzano." Respondent, although dressed in his uniform, was wearing the uniform "made usually for officers that are inside...police facilities. ...[H]e looked to me like he was assigned as the desk sergeant." Furthermore, Respondent was wearing a pancake holster, a holster that is "designed to conceal your duty or off-duty weapon closer to you when you are off-duty or you are inside a police facility doing office work." A pancake holster only holds a gun. The Department requires uniformed members of service, while on patrol, to wear a gun belt, the issued service weapon and mace. Respondent was not wearing his gun belt, which would have other equipment besides a gun, and did not appear to be wearing a bullet-resistant vest. Unlike Respondent, Ramos was wearing his full gun belt. UC 5032 explained:

Most partners that are out on the street, 99.9 percent will have the same equipment on, a gun belt, a vest. They will be dressed for field work. The sergeant had a pancake holster and looked like he just ran out of the precinct. I mean, he was assigned to the desk, you know, that's what

desk sergeants have or any officers assigned to inside work facilities.

After UC 5032 was approached by Ramos and Respondent, he saw Ramos direct Respondent to go back with UC 5032 to the vehicle that the UC was driving to retrieve the necessary paperwork for the vehicle. UC 5032 told Respondent that he had lost his driver's license but he had a paper that the Department of Motor Vehicles (DMV) had given him to present to the police should he be stopped. Respondent showed the paperwork to Ramos and Ramos directed Respondent to return to UC 5032's vehicle "to find out what kind of paperwork he has and registration for the vehicle." Respondent escorted UC 5032 to his vehicle and UC 5032 gave Respondent registration papers with a fictitious name. Respondent told UC 5032 to wait, which UC 5032 did while standing outside and in between his vehicle and the CI's car. UC 5032 saw Respondent approach Ramos and show Ramos the paperwork.

Respondent and Ramos then approached UC 5032 to ask about his registration and lost driver's license. At this point, the CI exited his vehicle to inquire "what's going on," and Ramos told the CI to return to his car. After asking a few questions of UC 5032 about his paperwork, Ramos directed Respondent to take UC 5032 "back to the car and have him wait there."

UC 5032 returned to his vehicle and asked Respondent if everything was okay and Respondent told him to wait. While UC 5032 waited in his car, he saw Respondent on his cell phone talking. Ramos approached UC 5032's vehicle and asked him questions about whether he knew the CI. UC 5032 said no, that he stopped to ask for directions because he was lost, and that the only person who responded was the CI.

UC 5032 observed Respondent standing by the driver's side of the CI's vehicle. Ramos left UC 5032's vehicle and approached Respondent. Ramos opened the door of the CI's vehicle, and the CI exited his vehicle. The CI turned towards his vehicle, and he was "placed into cuffs" by Respondent and Ramos.

Ramos approached UC 5032 in his vehicle and told him that the CI was under arrest because he had a warrant. Ramos told UC 5032 that he could leave, saying, "Your paperwork is all right. Everything is okay with you. You check out. He doesn't check out; he has a warrant." UC 5032 left the scene.

While viewing in Court the video surveillance, DX 1, UC 5032 testified that he observed that after he left the scene, Ramos looked into the rear of the RMP where the CI "was placed into cuffs." Viewing the videotape, UC 5032 described Respondent and Ramos standing outside the RMP with the CI, who was "not cuffed anymore." Viewing the videotape, UC 5032 noted the CI shaking Respondent's hand, then Respondent and Ramos entered the RMP and drove off the scene. Viewing the videotape, UC 5032 observed the CI's BMW at a gas station, shortly thereafter.

On cross-examination, UC 5032 testified that the reason for the integrity test was to investigate allegations of possible corruption and misconduct by Ramos, not Respondent. At the tactical meeting before the integrity test, UC 5032 was informed that Ramos had a relationship with the CI, Person A, also known as [REDACTED] that Ramos would appear at the integrity test with a partner, and that the partner would be revealed to UC 5032 during the integrity test. At the integrity test, Respondent was revealed to be the partner of Ramos.

A few hours before the integrity test, UC 5032 met with Person A and the case officer, Detective Randy Katakofsky. UC 5032 knew that Person A was a CI for the Department and that he was cooperating with the Department, but he was not aware of the crimes Person A had committed or for which he had been arrested.

In playing the role of an Arabic Jew for the integrity test, UC 5032, a Middle Easterner, spoke with an accent and prepared for the role by “using verbiage,” such as “this is very, very good” and “I’m very, very excited,” which are statements that Middle Eastern people who are new to the country use. He used an accent when speaking these words before arriving on the scene to prepare for the undercover role and to ensure that he didn’t “blow [his] cover.” However, he was not actually excited and did not believe that “any officer would be excited that this situation occurred.”

Observing the interaction between Ramos and Respondent at the stop, UC 5032, a police officer, considered Ramos, a police officer and a subordinate, to be ordering Respondent, his supervisor. “[I]t felt really out of place for him [Ramos] to say, go with that guy and go get his paperwork.” UC 5032, prior to joining IAB, was a housing officer and was involved in 50 to 100 car stops. He agreed that the 40 Precinct is a very busy command with “a lot of traffic.” However, UC 5032’s observations of Ramos and Respondent led him to believe that the relationship between the two was not of ordinary partners but of a subordinate, Ramos, ordering his supervisor, Respondent, at the stop.

UC 5032 testified as to several examples of the inversion of rank between Ramos and Respondent at the stop. Ramos directed Respondent to walk back to UC 5032’s car with UC 5032 to retrieve UC 5032’s paperwork for Ramos and Respondent did so. Ramos did most of the talking at the scene. When UC 5032 asked Respondent why he

was stopped, Respondent “really just didn’t want to say anything to me or answer the questions of why I’m being stopped or what’s wrong.”

Although a car stop can be a dangerous encounter with the public, UC 5032 did not believe that Respondent was on edge. Respondent did not follow the police protocol for a stop. The Department tactically teaches police officers that during a police stop, the motorist should be in the vehicle, “your RMP would be directed behind him not in front of the motorist, and not standing over there on a cell phone when you tactfully [sic] know that there are two individuals that you have in a car stop.” In this case, UC 5032 was outside his vehicle for a major portion of the stop and the RMP was parked in front and not behind the vehicles of the CI and UC 5032. In addition, Respondent was wearing a pancake holster and had his hands in his pockets. UC 5032 stated, “By looking at his demeanor, observation, he [Respondent] seemed very comfortable.”

On re-direct examination, UC 5032 testified that as soon as he put the bag of pre-recorded buy money into the trunk of the CI’s vehicle, he saw the RMP that was double-parked to his left start to move. “By the time it got up, while me and the CI were conversing, Officer Ramos and the sergeant [Respondent] exited the vehicle asking for the necessary paperwork.”

After concluding the integrity test, UC 5032 returned to his command and generated a report, in which he listed Ramos and Respondent as subjects. UC 5032 deemed that both Ramos and Respondent failed to follow Department guidelines, such as, [i]nvestigation of, you know, the vehicles; possible summonses, you know, I didn’t have a driver’s license. I was driving without a driver’s license. I had a piece of paper that they didn’t confirm with. Uniform of the day, they were not wearing uniform of the day, to be out on patrol like that, and the rest of the stuff was stated after the fact that I left the scene.

In addition, after watching the videotape (DX 1), UC 5032 noted that Ramos and Respondent conducted a fake arrest of the CI.

On re-cross examination, UC 5032 agreed that he has previously stopped a car and used his discretion to not issue a summons. Though he was aware that Ramos knew of the cue for the stop, UC 5032 did not know whether Respondent was aware of the cue for the stop. UC 5032 thought that based on the surveillance videotape (DX 1), Respondent probably knew about the cue that triggered the stop.

Police Officer Julia Gillen

Gillen, a five-and-a-half-year member of the Department, is currently assigned to the 40 Precinct. On August 11, 2009, she was assigned to the conditions auto with Police Officer Niazul Haque. At one point that day they responded to the scene of a physical altercation between a man and a woman on 149 Street between Park and Morris Avenues. One of the individuals had stolen a cell phone from the other. The woman had a purse, but Gillen did not take possession of it. Respondent responded to the location and asked Gillen if she wanted to take the arrest. Gillen told Respondent that she could not take the arrest, and Respondent told her that he would assign the arrest to somebody else. At Respondent's direction, Gillen and Haque resumed patrol. Gillen did not recall seeing Police Officer Armando Sanchez at the scene. She was not informed to whom the arrest was assigned. She did not generate any paperwork in relation to the incident.

On cross-examination, Gillen agreed that the 40 Precinct is very busy, and there was nothing unusually memorable about the incident. She recalled that there was a fight between a man and a woman over a phone, but she did not recall the particulars. She did

not recall the time of the incident, whether she summoned Respondent to the scene or whether he came without solicitation, or whether any members of the service other than Haque and Respondent were present at the scene. She frisked the woman but did not remember finding any weapons or narcotics. Gillen worked with Respondent for approximately six months. Respondent treated her like an adult and trusted her to do her job.

[The parties stipulated that the incident resulted in a small amount of marijuana being vouchered as arrest evidence. The amount of marijuana was equivalent to a little cigarette or maybe even half a cigarette.]

Police Officer Armando Sanchez

Sanchez, a 19-and-a-half-year member of the Department, is currently assigned to the 40 Precinct. He was assigned the arrests of the two individuals involved in the dispute on 149 Street on August 11, 2009. DX 3 is the Complaint Report that Sanchez prepared about the incident. DX 4 and 5 are the Arrest Reports of [REDACTED]

[REDACTED] and [REDACTED], respectively. Though Sanchez frisks everyone he arrests and also regularly conducts a search in front of the desk, he did not specifically recall searching the two individuals in this case. He would not search a female prisoner.

Upon review of the arrest paperwork, Sanchez testified that the arrest occurred at 3:23 a.m. He did not recall if he responded to the incident location or where he was when he first saw the two prisoners. He did not speak to Gillen or Haque that day about the incident. It was Respondent who gave him the information about the incident. Respondent informed him that the couple had been fighting over a phone. Sanchez did

not recall if he recovered marijuana from either of the parties. According to the arrest paperwork, however, they both possessed marijuana.

On cross-examination, Sanchez agreed that there was nothing particularly memorable about the incident. He received a call while in the station house that day, but he did not recall who was calling. He did not know whether he had a conversation with Ramos about the incident. He did not search the female prisoner. Missing evidence is something he would recall, and he did not recall anyone making an issue of missing marijuana in this case. He did not remember the outcome of the arrests. Sanchez worked with Respondent for more than five years. Respondent treated him fairly and professionally.

Sergeant Robert Rios

Rios, a 10-year member of the Department, is currently assigned to IAB, where he works for the Office of the Executive Branch. He was involved in the wiretap investigation conducted by the Bronx County DA's Office from 2009 to 2010. The initial subject of the wiretap was Ramos. As a result of the wiretap investigation, members of the service were arrested, including Ramos and Respondent.

Rios described the wiretap reporting system. When phone calls were made, they were automatically recorded. Pertinent information was recorded and stored in the Bronx County DA's Office on a hard drive called Thermaltake Max 4. Rios securely maintained the recordings of the wiretap for the Department at 315 Hudson Street in Manhattan.

When a request of a specific date and phone call was made, Rios plugged "in the external hard drive into a computer and then look[ed] up the phone calls and then burn[ed] it into a CD." Rios reviewed a CD, containing wiretap conversations on August 11, 2009, August 24, 2009, September 3, 2009, October 14, 2009, October 15, 2009, October 16, 2009, and October 29, 2009, in which Ramos was the target. Rios testified that he produced and burned the CD, which fairly and accurately represented the wiretapped conversations on these dates. The CD was admitted into evidence as DX 6. The transcripts of the wiretapped conversations contained in DX 6 were admitted into evidence as DX 7A, 7B and 7C.

On cross-examination, Rios testified that the initial wiretap was obtained on Ramos. The allegation against Ramos was that he was dealing with a drug dealer in a barbershop in the Bronx. Rios first became involved in the wiretap investigation in January, 2010. Before Rios, the lead investigator, Katakofsky, was involved in the wiretaps.

Minimization procedures were followed; that is, if during a phone call, Rios realized that the conversation was not related to the investigation, he would minimize it for two minutes. Rios would minimize the call so he was unable to hear the conversation. Then, he would listen in again for 30 seconds, and if it was unrelated, he would stop it for another two minutes. This pattern continued for any irrelevant portion of the telephone conversation. During minimization, while the entirety of the call is recorded, the voices are not being recorded.

## Person A

Person A, a civilian witness, was the CI who entered into a cooperation agreement with the Bronx County DA's Office and worked with IAB in their investigation of Ramos. Person A knew Ramos for approximately four years, "through mutual friends and the neighborhood I used to hang out in." Person A initially met Ramos at one of the two barbershops Ramos owned, named Who's On First, located on 149 Street in the Bronx. Ramos knew Person A as '██████████'. Person A knew that Ramos was a member of the service.

Person A described his relationship with Ramos as a casual friendship during which he provided Ramos with electronics, such as laptops and video game systems. These electronics were obtained fraudulently through credit card purchases. Ramos knew that Person A obtained the electronics illegally.

On or about October, 2009, Person A started working with Detective Randy Katakofsky from IAB in the Department's investigation of Ramos. After an arrest, Person A was asked by IAB how he knew Ramos. "I guess I was being watched. And I gave him an electric item and it just went from there." Soon thereafter, Person A entered into a cooperation agreement with the Bronx County DA's Office.

When Ramos told Person A that "he wanted to make some quick money," Person A told Ramos that he would "probably be able to set something up with a purchaser of electronics from me. And we spoke about it and we came up with a plan to pretty much take the money from the person who came to buy electronics from me." Person A and Ramos agreed that the plan would be executed in the Bronx and Ramos picked the location where they would meet with the purchaser and steal the money. Ramos told Person A instructions how the plan was to be executed:

When I – when I spoke to the purchaser, he was I was supposed to just take the bag, put the bag in my trunk. When he saw the trunk closed, he knew that – Officer Ramos would know that I had the money in my car.

Ramos also instructed Person A that at the time of the police stop of Person A and the purchaser, Ramos would ask both for identification and then make it appear that Person A was arrested. It was important to make it appear that Person A was arrested “[s]o the purchaser could pretty much be nervous and leave the scene.” Ramos told Person A that after the plan was executed, they would meet at the BP gas station on 138 Street, so that Person A “could give him his share of the money.”

Ramos told Person A that he would be with his partner, “Jake, Jacob . . . Sarge,” on October 16, 2009, the day the plan was to be executed. Person A understood that Ramos’ partner would be a member of the service.

Person A, as a CI, discussed Ramos’ plan with IAB. Before the execution of the plan, Person A met with UC 5032, who was to play the role of the purchaser of stolen electronics.

On October 16, 2009, the day of the execution of the plan, Person A, as the CI, was wearing a recording device. A CD of the recording of the conversations on that date that Person A had with Ramos, Respondent and UC 5032 and conversations that Person A had with Katakofsky and UC 5032 was admitted into evidence as DX 8. A transcript of the audio recordings of the CD was admitted as DX 8A. In addition, Person A viewed a portion of DX 1 and identified Ramos and Respondent as the officers at the scene on October 16, 2009.

On October 16, 2009, at about 7 a.m., Person A drove from Manhattan to the Bronx in his silver BMW. Person A parked his BMW on Exterior Street and waited for UC 5032,

who was the buyer, to show up. While he was waiting in his car, Person A contacted Ramos. Ramos told Person A that "he was in the area and we pretty much went over it again, that when he – when he saw the trunk opening and closed, he would know that I had the money in the car."

In the audio recording, DX8, and the transcript of the audio recording, DX8A, Ramos told Person A, "After, after the trunk, after you open and close the trunk, stall for a second and I'll come up." Person A responded, "Okay, got you. All right." UC 5032, as the purchaser, showed up at the scene. Person A and UC 5032 talked for a few minutes and Ramos and Respondent pulled up in the RMP.

Upon seeing Respondent, Person A realized that he had seen Respondent before in Ramos' barbershop. Respondent and Ramos asked Person A and UC 5032 what they were doing and asked for identification. Respondent and Ramos got back in their vehicle and did a license check. Respondent talked to UC 5032 while standing by UC 5032's vehicle. Ramos approached Person A while Person A was in his car and then Ramos headed towards UC 5032.

While Ramos was speaking to UC 5032, Respondent approached Person A, who remained in his car, and Respondent spoke with Person A about his BMW, telling Person A "how nice the car is, the steering wheel, just the gadgets on the car." The following is a transcript of the conversation Respondent had with Person A, a/k/a "████" (DX 8A):

Respondent: Just --. You'll get 'em back. That shit's hot, man.

████ It's all right.

Respondent: That shit fucking the steering wheel - - tilt it up?

████ Yeah, it goes up, down, in, out.

Respondent: Ah, that's cool, man.

Shortly thereafter, Ramos came back and asked Person A to step out of his vehicle. Ramos told Person A he was being arrested for “suspended license and everything else.” (DX 8A). Person A got out of his vehicle and turned towards his vehicle. Person A placed his hands behind his back, but Respondent told him, “I’m not going to handcuff you, just hold the cuffs.” Respondent never actually physically handcuffed Person A.

Respondent took Person A to the RMP and placed Person A in the patrol car. Ramos spoke with UC 5032 and told him to leave the scene. After UC 5032 left the scene, Ramos tried to move Person A’s BMW but Ramos “didn’t know how to drive it, start it,” so he got out of Person A’s car. Ramos approached the RMP and Respondent let Person A “out of the back of the police car and shook hands with me and I left.”

After leaving the scene, Person A drove to the designated BP gas station on 138 Street in the Bronx. Person A waited in his car for Ramos to contact him “so I could give him his share of the money.” Ramos arrived and took the bag of cash out of the trunk of Person A’s vehicle. There was \$30,500.00 cash in the bag, and Ramos “took the money out and counted the money, and I split it with Officer Ramos.” Ramos told Person A that he would take care of Respondent “out of his half.”

In the transcript of the audio recording (DX 8A), Ramos told Person A that he was giving almost half of his share of the money to Respondent. Ramos said, “It’s a half of half deal, so know what I mean? With him it’s like I got – that’s why I’m like I hope this is what you say or even more ‘cause I’m stuck. I got to give him almost half of it.’” In Person A’s car, Ramos is heard counting the money (DX 8). Person A described what Ramos said to him while in the car counting the money (DX 8A):

My man is like my man was like, “Jose, this is 17 years on the line. Do not waste it.” I was like, “No, it’s a ground ball.” He’s like, “How do you figure?” I

said, "Jake, it's a ground ball. Don't sweat the small shit." Then he saw you and he's like, "I know him. Ain't that guy from the barbershop?" "Yeah." He's like, "All right, all right. What do you want me to do with the other dude?" I said, "Just scare him to death." That's exactly what we did.

In another portion of the transcript of the audio recording (DX 8A), the following colloquy ensued:

- PO Ramos: I told you I know Jake.  
[REDACTED] You know your people.  
PO Ramos: And not for nothing, Jake is really good. Jake is smooth. Jake is like, "Over here. Go back here."  
[REDACTED] You see my whole my whole thing with that is, man, I own well, you told me not to say nothing. You told me not to say nothing. I didn't want to insult nobody but honestly speaking, Jose, if I'm if I fuck with somebody else, anybody, like you.  
PO Ramos: He's the one guy you should know. He's very humble. – but very rarely very few people I even trust --. I would say maybe but him he's real humble. He's not shaky but he's like – he's never been involved with nothing other than, you know. That's like he didn't even want to cuff you. I'm starving. I haven't eaten all night.  
[REDACTED] Your fucking radio on?  
PO Ramos: I just got out of work. Yo, he didn't even want to cuff you. He didn't want to handcuff you. He was like I was like, "Jake, just put his fingers through it," because I knew he wasn't going to want to cuff you because he's like, "I know him. Like that's the guy from the barbershop." That's why I was like, "Here, just hold this thing." He's a fucking clown. That's my man though. That's my people. At any rate. I got to go to traffic court. I got to all the way home and get this fucking memo book and lose in court today. What kind of court you going to?

On cross-examination, Person A admitted to a gun possession conviction, an open indictment in the Bronx for forgery and fraudulent use of credit cards to purchase electronics and an arrest in November 2012 while working as a CI.

After his arrest on forgery charges, Person A was arraigned and subsequently released on his own recognizance. After his release, the attorney representing Person A at

the time spoke with the DA's Office. A meeting was held, where Person A, his previous attorney and law enforcement officials, including Katakofsky, were present. At the meeting, Person A entered into a cooperation agreement with the Bronx County DA's Office and the Department.

The purpose of the cooperation agreement was to assist in the investigations of the DA and the Department and to fully cooperate with the Department. Person A entered into the cooperation agreement primarily to benefit his co-conspirator, [REDACTED], a very good friend, and to benefit himself. As part of his cooperation agreement, Person A promised that he would stay out of trouble, not engage in any criminal activities, and "always to be truthful." However, in November 2012, Person A was arrested on theft charges.

Since September, 2009, Person A's regular contact with both the DA's Office and the Department is Katakofsky. Since 2009, Person A has met with Katakofsky numerous times about the Ramos case. Person A estimated he met with Katakofsky more than ten but less than fifty times.

On October 16, 2009, Ramos did not want Person A to speak with Respondent. Person A also never spoke with Respondent about this incident. Ramos alone met with Person A later at the BP gas station to collect the money in the bag. Although Ramos told Person A that he was "going to split his half" with the Respondent, Person A had his own doubts about whether Ramos would do so. Person A believed that Ramos did not want "me to know how much money was involved." However, Person A did not agree that Respondent did not know "what was going on." After UC 5032 left the scene, Ramos

escorted Person A out of the RMP and handed him his driver's license. Then Person A handed Respondent "back his handcuffs" before leaving the scene.

On re-direct examination, Person A testified that after he entered the cooperation agreement, Ramos issued a death threat against Person A.

Several days before October 16, 2009, Person A spoke with Ramos about the plan. Ramos told Person A that another police officer would be present for the execution of the plan and that his name was Jake.

On October 16, 2009, Person A realized that Respondent "was in on that plan" when Respondent did not handcuff Person A during the fake arrest and Respondent told Person A "to hold the handcuffs behind my back." Person A sat in the RMP holding the handcuffs in his two hands, with two fingers on each side, until Respondent and Ramos let him out of the RMP. When he exited the RMP, Person A returned the handcuffs to Respondent.

On re-cross examination, Person A agreed that while he was sitting alone in the RMP, wearing a recording device, he never mentioned Respondent's involvement. However, Person A testified that he has been arrested in the past and it is "not normal for an officer to place you in the back of the car holding the handcuffs."

Sergeant Bryan Brooks

Brooks, a 16-year member of the Department currently assigned to IAB, investigated the allegations of misconduct involving Respondent. He inherited the case from its original investigator, Katakofsky. When he received the case, the allegations against Respondent were official misconduct committed on October 16, 2009, tampering with evidence (marijuana) on August 11, 2009, and failing to notify IAB of misconduct

committed by Ramos. As part of his investigation, Brooks participated in the official Department interview of Respondent on August 27, 2013. Respondent's attorney was present at the interview. The CD recording and transcript of the interview were admitted into evidence as DX 9 and 9A, respectively.

The alleged misconduct that occurred on August 11, 2009 came to the Department's attention in a wiretapped telephone call between Ramos and an individual known as Person B. In his interview, Respondent stated that he had both a professional and personal relationship with Ramos and that he also knew Person B. Brooks explained that Person B was an employee at a barbershop that was owned by Ramos and was also an alleged drug dealer. Brooks noted that Ramos owned two barbershops within the confines of the 40 Precinct and that criminal activities took place inside the barbershops. In his interview, Respondent stated that he knew Person B from the barbershop, that he had been introduced to Person B by Ramos, and that he had seen Person B on a couple of occasions at Ramos' house.

The wiretapped call that took place on August 11, 2009 between Ramos and Person B was about evidence from an arrest that had taken place earlier in the evening. The evidence, marijuana, had been misplaced, and Ramos called Person B about obtaining replacement marijuana in the event that the original marijuana could not be found. Respondent could be heard saying "I'm sorry" to Person B in the background of the call. Brooks explained that the arrest stemmed from a dispute that Gillen and Haque responded to on 149 Street. Respondent responded to the scene and subsequently assigned the arrest to Sanchez. In his official Department interview, Respondent admitted that he was present at the location, took possession of a small cigarette of

marijuana, and placed it between the seats of his car with a bunch of napkins. Respondent stated in the interview that while driving back to the command, he grabbed the napkins and threw them out the window. After arriving at the station house and realizing that he had also thrown the marijuana out the window, he returned to the location and retrieved the evidence. When asked how he found the marijuana, Respondent stated that he remembered it was at the intersection of 143 Street and Morris Avenue. When asked for more specifics, all Respondent could provide was that he found the marijuana near a manhole cover in the street. At the official Department interview, the wiretapped conversation was played for Respondent. Respondent at first denied that it was his voice in the background but ultimately admitted that it was him. The 40 Precinct roll call (DX 10) confirmed that Gillen and Haque were assigned as partners, Respondent was the patrol supervisor, and Ramos was Respondent's operator on August 11, 2009.

DX 7A contains the transcript of a telephone conversation between Ramos and Person B. The call took place at 3:49 a.m. on August 11, 2009. In the call, Ramos told Person B that he and Respondent arrested a man who had marijuana on him. Ramos advised Respondent to throw the marijuana out and, according to Ramos, Respondent threw the marijuana out the car window on the drive back to the station house. Once in the command, another officer "made issues" by mentioning the marijuana. This made it necessary for Respondent and Ramos to return to the location where they had discarded the marijuana and search for it. The search was successful. Respondent can be heard laughing in the background of the conversation.

About the allegation that Respondent failed to notify IAB of misconduct committed by Ramos, Brooks testified that this came to the Department's attention in wiretapped conversations. One of these conversations between Respondent and Ramos took place on August 24, 2009 and was about a washer/dryer. In the conversation, Ramos told Respondent that he had a friend who was selling at half price a washer/dryer that had fallen off the back of a Lowe's truck. In his interview, Respondent at first stated that he did not think anything of his conversation about the washer/dryer, but he later conceded that the washer/dryer in question was likely stolen property.

In a second wiretapped conversation, dated September 3, 2009, Ramos called Respondent and asked Respondent to sign him out at work. Respondent replied to Ramos that signing him out would not be a problem. Respondent admitted in his official Department interview that there were multiple occasions that Ramos asked him to sign him out.

In an October 29, 2009 telephone call, Ramos asked Respondent if he was interested in joining him in transporting Enterprise rental cars for an "off the books" cash payment. Respondent admitted in the interview that this job would not have been authorized off-duty employment. DX 7C contains transcripts of the August 24, September 3, and October 29, 2009 conversations.

On August 11, 2009, Respondent called Ramos to see if Sanchez was looking for an arrest. Ramos told Respondent that he would check with Sanchez and in the meantime get a ride from Person B to the incident location. Upon review of this conversation, Respondent agreed in his interview that Ramos was not at first present with him at the scene of the arrest that took place on 149 Street. Brooks testified that Person B was not a

member of the service and that on-duty members of the service are not allowed to receive rides from civilians. DX 7A contains the transcript of the August 11, 2009 phone call between Respondent and Ramos. Respondent never notified IAB of any of his conversations with Ramos.

The allegation of official misconduct first came to the attention of the Department in a wiretapped conversation that took place on October 14, 2009. In that conversation, Ramos called Respondent and requested that they work together on patrol on October 16, 2009 because he needed to conduct a stop of a guy who was coming from Manhattan. On October 15, 2009, Ramos called Respondent again to confirm that they would be working together the next day.

The integrity test involving UC 5032 and Person A took place on October 16, 2009. During his investigation, Brooks learned that Person A was involved in the selling of stolen electronic goods. Brooks testified that Ramos was assigned RMP 4561 on the day of the integrity test. Respondent was assigned desk duty but left the command to go out on the street. He did not sign out in the Command Log. He was wearing a pancake holster, not his gun belt. He was not wearing a bullet-resistant vest. On a telephone call, Ramos told Respondent that the man who, unbeknownst to him, was UC 5032 had to observe Person A in handcuffs. The video of the integrity test showed a simulated cuffing of Person A, in that Respondent had Person A put his hands behind his back and hold the handcuffs in his hands. Person A was placed into the back of the RMP, but he was never actually arrested that day. There was \$30,500 involved in the test. At the end of the day, Person A returned \$15,600 to the Department and Ramos kept \$14,900.

At his official Department interview, after being confronted with the recordings of the telephone calls from Ramos, Respondent stated that he left the desk on October 16, 2009 because Ramos had asked him for help in handling some sort of harassment or dispute. When he arrived at the location with Ramos, there was a black man standing outside a car. The man stared at him and made a sudden jerking gesture. He decided to handcuff the man, but he only succeeded in getting one cuff on. The second cuff jammed. Respondent placed the man in the back of the RMP. He did not know what transpired at the scene before his arrival.

After being shown the video recording of the incident, Respondent told investigators that he had no recollection of anything depicted on the video. There were no property vouchers prepared by Ramos or Respondent regarding the incident. DX 7B contains the transcripts of the calls that took place between Respondent and Ramos on October 14, October 15, and October 16, 2009. DX 11 and 12 are the 40 Precinct roll call and Command Log for October 16, 2009.

On cross-examination, Brooks testified that when he was first assigned Respondent's case, he spoke with Katakofsky about it. Brooks has since learned that Katakofsky was served with Charges and Specifications. He has not spoken with Katakofsky recently.

Ramos was the target of the October 16, 2009 integrity test. Brooks agreed that in the official Department interview Respondent described his personal relationship with Ramos as being limited.

Brooks never interviewed Police Officer Roger Andino, who was Sanchez's partner on August 11, 2009 because he (Andino) was retired from the Department.

Brooks conceded that Andino might have possibly possessed relevant information that could have shed light on the situation, and that nothing prevented him from requesting an interview with Andino.

Brooks agreed that when Ramos discussed future criminal activities with Person A in a recorded October 16, 2009 conversation, Ramos made no reference to Respondent being a participant in those activities. When Person A told Ramos in that same conversation that he wanted to deal directly with Respondent, Ramos told Person A not to do that, not to talk with Respondent or offer him anything. Ramos and Person A agreed to split the money evenly. There was no evidence that Respondent received any of the money.

In his official Department interview, Respondent repeatedly stated that he could not identify his voice in the background of the recorded August 11, 2009 phone call between Ramos and Person B. The voice in the background said just one word. Respondent told investigators that he and Person B had similar voices. Both Brooks and a lieutenant continued to question him about this. The official Department interview started at 12:26 p.m. and did not conclude until 5:55 p.m. A voice print analysis was not conducted in this case, though that was an investigatory step that could have been taken. Brooks agreed that there was no evidence that Respondent heard the content of Ramos and Person B's conversation. Respondent denied hearing the conversation, and there was no evidence that Respondent even knew the conversation took place.

In his official Department interview, Respondent stated that he had no recollection of his recorded October 14, 2009 telephone call from Ramos about working together later in the week. In the recording, Respondent can be heard laughing during the

conversation. Brooks agreed that there was no evidence that Respondent was taking Ramos seriously.

About the phone calls concerning Enterprise rental cars, Brooks agreed that there was no evidence that Respondent engaged in unauthorized off-duty employment.

Investigators were never able to locate the officer who mentioned the missing marijuana on August 11, 2009. Respondent stated in his interview that he accidentally threw the marijuana out the window with the napkins but was subsequently able to retrieve it. The marijuana was ultimately vouchered.

The August 24, 2009 recorded conversation commenced with Ramos asking Respondent if he needed a washer/dryer. Respondent replied that not only did he not need a new one but that he had one of his own that he was trying to get rid of.

Respondent and Ramos went back and forth on how they were trying to get rid of their washing machines, and Respondent at one point laughed. Respondent stated in his interview that he considered the conversation insignificant and did not pay it any mind. He indicated that had he taken it seriously as misconduct he would have reported it to IAB.

Brooks testified that in his official Department interview, Respondent stated that he did not recall the October 14, October 15, and October 16, 2009 recorded telephone calls with Ramos. Respondent had no idea what the video of the October 16, 2009 incident was about. Respondent's official Department interview took place four years after the incident, and the questioning about the incident took place towards the end of the interview. Brooks agreed that the incident was some form of a car stop. He also

agreed that the 40 Precinct is a busy precinct and that car stops are possibly routine occurrences for the officers who work there.

Brooks testified that because Person A's hands were behind his back, it was not clear on the video of the incident that Person A was not properly handcuffed. Brooks agreed that the participants in the integrity test had a better view of what occurred than the view captured on video. There was a point in the video where Ramos looked like he was speaking into his radio microphone, and Brooks told Respondent during the interview that Ramos was not actually making a radio transmission. Brooks testified that he had no knowledge of Ramos making a transmission that day, though the Undercover Investigation Report in his case file indicated that a transmission was made.

Brooks learned during his investigation that Person A had a cooperation agreement with the Bronx DA's Office. Part of the agreement was that Person A not engage in criminal activity other than as part of a Department investigation. Brooks was aware that Person A was arrested approximately a year ago for stealing over a million dollars worth of iPads from Kennedy Airport.

Brooks was one of the investigators assigned to the Department's ticket-fixing cases. He testified that he was not familiar with a retired lieutenant known as "Mr. Fix-it."

#### Respondent's Case

Respondent called Omer Wiczyk and Detective Randy Katakofsky as witnesses.

Omer Wiczyk

Wiczyk is an assistant DA in the Bronx. He is the assigned prosecutor for both Respondent's case and Ramos' case. He recalled making the following statement at Ramos' October 2011 arraignment: "Now there's no allegation that Sergeant Solorzano was aware that a robbery was occurring, but as this defendant [Ramos] told his partner [Respondent], I'm just messing with somebody." Wiczyk explained that what he meant by that statement was that there were "no allegations sufficient to support a charge that [Respondent] was fully aware of what was going on with respect to the robbery, because at the time all we knew was what was contained in the recordings from the wiretap." Respondent was not charged with the October 16, 2009 robbery or even knowing that the robbery occurred. Similarly, there was insufficient evidence to bring charges against Respondent relating to the August 11, 2009 marijuana incident. He was only charged with Official Misconduct, subdivisions one and two.

On cross-examination, Wiczyk testified that based on what he knew of Respondent's relationship with Ramos, he had an assumption of "more than 50 percent" that Respondent actually knew what was going on. He explained his personal opinion of the case: "I can tell you that it seemed odd to me that a sergeant with 17 years is involved in a robbery without knowing about it. I mean, I think the joke at the time is that either he is criminally involved or he might be . . . one of the stupidest police officers I ever heard. I don't know how you get involved in a robbery without knowing it." There was, nevertheless, no evidence for the grand jury that Respondent knew specifically that a robbery had taken place.

Wiczyk confirmed that the Official Misconduct that Respondent was indicted on arose out of the October 16, 2009 incident with UC 5032 and Person A. Unlike the robbery, there was clearly enough evidence to show that Respondent committed Official Misconduct. Wiczyk indicts a case only when he believes the case can be proven beyond a reasonable doubt at trial.

Detective Randy Katakofsky

Katakofsky, a 13-year member of the Department, has been assigned to IAB since 2003. In August 2009, he was served with charges for utilizing a Department computer for personal use and engaging in unauthorized off-duty employment. He pled guilty to this misconduct and forfeited 30 vacation days as a penalty. Katakofsky investigated the case that involved Ramos, and he was supervising wiretaps of Respondent's phone calls during the same month that he (Katakofsky) was served with charges. The acts of misconduct that Katakofsky pled guilty to, however, occurred approximately 18 months earlier.

Katakofsky has also been served with Department charges for improperly providing information he learned during the course of a confidential investigation to a member of the service who was no longer assigned to that investigation. Ramos was the subject of the investigation. The investigation involved the wiretapping of calls on which the voices of numerous members of the service, including Respondent, were recorded. After hearing Respondent on a call, Katakofsky believed that further inquiry was necessary. At the time, the crime under investigation was the alleged sale of marijuana. As part of his investigation, Katakofsky conducted at least ten surveillances. The

surveillances took place sporadically over the course of a month. Katakofsky also attempted to use at least one CI as part of his investigation. He did not attempt any controlled buys or use an undercover to purchase marijuana. He explained that Respondent went from being “a person of interest” to a suspect only when Respondent was observed on video conspiring to commit robbery.

Katakofsky has also been charged with performing an unauthorized integrity test, but he is still the assigned investigator on Respondent’s criminal case. He explained that there are separate administrative and criminal cases proceeding against Respondent, though both investigations involve the same alleged activity.

Katakofsky explained what investigative steps he would take after receiving an anonymous call that a police officer was planning a robbery: “First, I would run a background investigation on him, where he’s been, what commands, if there’s any similar allegations that have happened in the command with any other officers, any patterns.” He continued, “I would conduct an intel check to see if there was any intel coming out of the precinct on the officer himself. I would conduct report of calls. I would do surveillance operations; check his credit report history.” As in Respondent’s case, there would be no need for an undercover in this hypothetical case. Katakofsky has had one conversation with Brooks about the case.

FINDINGS AND ANALYSISSpecification Nos. 1 and 2

Specification No. 1 charges that Respondent, on October 16, 2009 in Bronx County, committed an unauthorized act relating to his office with the intent to obtain or deprive another person of a benefit constituting official misconduct.

Specification No. 2 charges that Respondent, on October 16, 2009 in Bronx County, while acting in concert with Police Officer Jose Ramos, stole property worth more than three thousand dollars.

The Department argued that in 2009 there was a wiretap investigation which the Bronx DA's Office initiated. The subject of that wiretap investigation and Department integrity test was Police Officer Jose Ramos, formerly assigned to the 40 Precinct. The integrity test, planned by IAB, involved the confidential informant Person A, known to Ramos as [REDACTED] Ramos was friendly with Person A and knew Person A was involved in selling stolen electronic goods.

Person A, as the CI, concocted a plan with Ramos to take money from a person who came to buy stolen electronics from Person A. Unbeknownst to Ramos, that buyer would be an undercover, UC 5032, working with the Department. Person A told Ramos that he would be meeting this buyer in the Bronx. The plan was to have the buyer drop the bag containing money in the trunk of Person A's vehicle and that would cue Ramos to stop Person A and the buyer. Ramos would scare off the buyer by staging a phony arrest of Person A. Once the buyer left the scene, Person A and Ramos would split the buyer's money that was placed in Person A's trunk. This plan was to be executed on October 16, 2009.

On October 14, 2009, Ramos called Respondent and asked if Respondent was going to be on patrol on Thursday night and Friday morning (October 16). He told Respondent, "I gotta be on patrol . . . I wanna do . . . something . . . Friday morning . . . I have to catch up to somebody's who gonna be driving through that precinct. . . . He tells me, 'Yeah, I'm driving through...Manhattan.' I said, 'Good. Make sure you drive through.' . . . I wanna . . . stop him. It's the person he's with." Ramos emphasized to Respondent, "It's important that I'm working with you cause anybody else will . . . make it a big deal. . . . I'm not trying to make it no arrest." Respondent laughed and agreed to meet with Ramos. At the end of the conversation, Ramos said again, "Yo, Jake, it's really important for Friday morning, Man. . . . Make sure we are in the same car because I can't let this guy get by." Respondent told him it would not be a problem.

The next day, October 15, 2009, Ramos called Respondent to confirm that Respondent would be working with him that night and the next morning and Respondent confirmed that he would be.

On October 16, 2009, the plan was executed. Respondent and Ramos were videotaped and both Person A and UC 5032 were wearing devices that recorded the entire transaction. The recording and video showed UC 5032 and Person A having a conversation outside of the vehicles on Exterior Street in the Bronx.

UC 5032 testified that he placed a bag containing \$30,500 in Person A's trunk. As planned, Ramos and Respondent pulled up in the RMP. They asked UC 5032 and Person A for their license and registration. Ramos told UC 5032 that Person A was being placed under arrest for an open warrant and suspended license.

During this planned stop, Ramos surreptitiously called Respondent's cellphone to advise Respondent, "He's gotta see him cuffed and put in his car before he goes." Respondent's response was, "All right. . . . We're going to do this. Let's do this." Then Respondent had Person A place his hands behind his back, simulated an arrest and placed Person A in the back of the RMP. Person A testified that Respondent did not cuff him. This was all done for UC 5032 to witness. UC 5032 played the role of the buyer pretending that he did not know Person A and was just asking Person A for directions. UC 5032 acted the role of being very afraid. Ramos eventually told UC 5032 he was free to go.

Once UC 5032 left the scene, Person A was released from the RMP. Respondent shook hands with Person A. Respondent's shaking Person A's hand can be clearly seen on the video. Ramos and Respondent got back in the RMP and left the scene.

Person A was never arrested nor was any property ever vouchered. Person A left the scene and went to the BP gas station where he had agreed to meet Ramos. At the gas station, Ramos entered Person A's car and received his share of the proceeds, which was \$14,900. Officer Ramos told Person A that he would give Respondent half of his share. The conversation between Ramos and Person A was heard on the recording device that Person A was wearing.

Respondent's attorney argued that the taped conversations between Respondent and Ramos that the Department alleged show Respondent conspiring with Ramos are taken out of context. According to Respondent's attorney, the tapes show Respondent laughing and not even taking Ramos seriously; Respondent did not believe that Ramos was engaged in any misconduct worthy of notifying the IAB.

Respondent's attorney also argued that the CI (Person A) could not be considered credible because of his lengthy criminal history. He has a conviction for possession of a firearm. He also has an open indictment for forgery in the Bronx. The forgery involves the fraudulent use of credit cards to purchase electronics. While Person A had a cooperation agreement with the Bronx DA's office and the New York City Police Department to assist them in their investigation, he was arrested in November 2012 for a million dollar theft of iPads from JFK Airport.

Respondent's counsel also attacked the credibility of the investigators assigned to the case, Sergeant Brooks and Detective Katakofsky. He argued that Brooks had missed a document in his file that showed a contradiction between the memories of the CI and UC 5032. He argued that Katakofsky could not be trusted because he denied knowing the name of "Mr. Fix It" when everyone in the Department knew "Mr. Fix It" had been involved in the ticket-fixing cases to which Katakofsky was assigned. Also Katakofsky had pending charges in the Department for performing an unauthorized integrity test and improperly providing information learned during the course of a confidential investigation to a member of the service no longer assigned to that investigation.

Finally, Respondent's attorney argued that the Department was unjustly attributing the criminal conduct of Ramos onto Respondent. Respondent was just unlucky to be working with Ramos as his partner. Respondent was not present during the meetings with the CI where Ramos developed his criminal plan. Respondent was not present at the last meeting when the CI brought the money and split it with Ramos and no one else. The Department could not provide evidence that Respondent ever received any

money. The Respondent's attorney argued that Ramos committed the misconduct, not Respondent. Respondent was unaware of the true nature of Ramos' criminal conduct, the Respondent's attorney argued, and Ramos planned his misconduct by taking advantage of Respondent's gullibility by deliberately keeping Respondent ignorant of his plans.

The CI, Person A, may have had reasons to help the DA and the Department, but, as Respondent's attorney pointed out in his cross-examination, Person A had no reason to believe that Respondent was involved. His only interest was to gather the evidence against Ramos and learn who Ramos' partner was. No motivation to specifically implicate Respondent was ever demonstrated. Person A's testimony consisted of explaining the integrity test and narrating the videotapes and audiotapes which were played in the courtroom. While Person A might not be a trustworthy or law-abiding person, the facts he presented, which were corroborated by the Department's UC, the videotapes and audiotapes, were never discredited. Nor did the issues which Respondent argued affect the credibility of the investigators or cast any doubt on their descriptions of the background of the investigation.

As Respondent's counsel indicated, Respondent can be heard laughing on recorded conversations with Ramos. The laughter heard on these recordings did not really indicate, as Respondent's counsel argued, that Respondent did not take Ramos seriously. Rather Respondent's laughter indicated that he thought Ramos' general criminal behavior was funny.

Noticeably absent in the argument of Respondent's counsel was any reference or explanation for what was plainly seen on the videotape which was played in the courtroom. On the video (DX 1), Respondent and Ramos, who are in uniform and

driving a marked RMP, can be seen engaged in a police interaction with Person A and the UC. Eventually the UC is ordered into his vehicle while the two uniformed officers order Person A to put his hands on the top of car, a sporty BMW. Respondent frisks Person A. He appears to handcuff him and place him in the RMP in custody. Ramos, while speaking on his radio, walks back to the UC, who was in a position to have seen all of this while seated in his car. Ramos appears to tell him to leave. The UC speeds off. Then, after the UC leaves the area, Person A exits the RMP, engages in some banter with Respondent and Ramos, shakes Respondent's hand, then goes to his car and drives off. After viewing this videotape, there can be no question that the two officers engaged in a fake arrest of Person A. When confronted at his official Department interview with the videotape and audiotapes of the events on October 16, 2009, Respondent said he did not remember the incident and had no explanation for what he saw on the videotape.

As Respondent's counsel argued, Respondent did not initiate, plan or lead this criminal scheme and Ramos did. In his last conversation with Person A, Ramos even referred to Respondent's desire to involve himself minimally. However, while Respondent was not apprised of the specifics and did not concoct the plan, the evidence demonstrates that Respondent was available to and did assist Ramos. The taped conversations between Ramos and Respondent on October 14 and 15, 2009, making plans to meet and the audiotapes and videotapes on the day of the executed plan and simulated arrest made by Ramos and Respondent on October 16 are overwhelming evidence that Respondent was a knowing and full participant in Ramos' scheme to steal money.

Therefore, Respondent is found Guilty of Specification Nos. 1 and 2.

Specification No.3

Respondent is charged with, on multiple occasions between August 11, 2009 and October 28, 2011, knowing that Ramos was involved in ongoing serious misconduct and/or corruption and failing to notify IAB about it.

On August 11, 2009, Respondent was assigned as patrol supervisor, and Ramos was assigned as his operator. However, a wiretapped conversation demonstrates that Ramos was not with Respondent when Respondent went to the scene of an arrest on 149 Street. In a phone call, Respondent gave Ramos his location, and Ramos replied that Person B would give him a ride there. Respondent knew that Person B worked at the barbershop. Because it is against regulations for an on-duty member of the service to receive a ride from a civilian, it was misconduct for Ramos to ride with Person B. Respondent should have reported this misconduct to IAB.

In an August 24, 2009 call, Ramos told Respondent that he had a friend who was selling at half price a washer/dryer that had fallen off the back of a Lowe's truck. Respondent admitted in his interview that he understood the phrase "fell off the back of the truck" to mean that the item was stolen. Respondent should have reported this information to IAB.

On September 3, 2009, Ramos called Respondent and asked Respondent to sign him out at work. Respondent replied to Ramos that signing him out would not be a problem. Respondent admitted in his interview that there were multiple occasions that

Ramos asked him to sign him out. Respondent should have reported this misconduct to IAB.

In an October 29, 2009 call, Ramos asked Respondent if he was interested in joining him in transporting Enterprise rental cars for an “off the books” cash payment. Although there was no evidence that Respondent ever engaged in this type of employment, he should have notified IAB of Ramos’ intention to work an off-the-books, and presumably unauthorized, job.

As discussed in the analysis for Specification Nos. 1 and 2, Respondent was present and aware of Ramos’ actions on October 16, 2009. He should have reported this to IAB.

Based on the foregoing, Respondent is found Guilty of Specification No. 3.

Specification Nos. 4 and 5

Specification No. 4 charges that Respondent, on or about August 11, 2009, while acting in concert with Ramos, after arresting an individual who possessed a quantity of marijuana, threw the marijuana from the window of an RMP. Specification No. 5, which stems from the same act as Specification No. 4, charges Respondent with attempting to discard the marijuana.

It is not disputed that on August 11, 2009 Respondent responded to the scene of an altercation between a man and a woman on 149 Street. Gillen and Haque broke up the altercation, but neither of them wanted to take the arrest. Respondent took possession of a small quantity of marijuana, and he assigned the arrest to Sanchez.

The alleged misconduct that occurred that day came to the Department's attention in a wiretapped call between Ramos and Person B. In the call, Ramos told Person B that he and Respondent arrested a man who had marijuana on him. Ramos advised Respondent to throw the marijuana out and, according to Ramos, Respondent threw the marijuana out the car window on the drive back to the station house. Once in the command, another officer "made issues" by mentioning the marijuana. This made it necessary for Respondent and Ramos to return to the location where they had discarded the marijuana and search for it. The search was successful. A third person can be heard laughing in the background of the conversation and at one point saying "I'm sorry" after Ramos apologized to Person B for waking him up. After being confronted with the wiretapped call at his official Department interview, Respondent at first denied that it was his voice in the background but ultimately admitted that it was him.

Respondent stated in his interview that he placed the marijuana in between the seats of his car with a bunch of napkins, and while driving back to the command he grabbed the napkins and threw them out the window. After arriving at the command and realizing that he had accidentally thrown the marijuana out the window with the napkins, he returned to the location and retrieved the evidence. The marijuana was ultimately vouchered as arrest evidence.

The Department's case for Specification No. 5 was based entirely on hearsay, Ramos' conversation with Person B. The Department was never able to identify the officer who allegedly made issues about the missing marijuana, and there was no testimony about anybody making issues. Because Ramos did not testify, the Court had no opportunity to assess the credibility of his account tested under cross-examination. In his

interview, Respondent denied hearing Ramos and Person B's conversation and Brooks agreed that there was no evidence that Respondent heard the content of the conversation. Respondent admitted in his interview that he threw the marijuana out the window of the RMP. Without any corroboration, however, the Department failed to prove by a preponderance of the credible evidence that this action was a deliberate attempt by Respondent to discard the marijuana.

Accordingly, Respondent is found Guilty of Specification No. 4 and Not Guilty of Specification No. 5.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on August 27, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Department Advocate recommended that Respondent be dismissed from the Department. Respondent's counsel recommended that if Respondent was found guilty of any of these charges that Respondent's penalty be no more than the 30 days he was already suspended. Respondent's counsel urged the Court not to recommend termination with the elimination of Respondent's pension.

At the conclusion of the summations, the Court requested that counsel speak with Respondent to ask if there was anything he would like to add about his history with

the Department which he wanted to be considered in the trial record. Respondent's counsel submitted the following:

[Respondent] was a Police Cadet from 1991-1993 before becoming a Member Of Service (MOS). [Respondent] was involved in two shootings while on duty. In one, he sadly had to take the life of a deranged man who was beating his own mother. That shooting devastated him emotionally. In the other shooting, he was shot at and received a graze wound. [Respondent] was also by happenstance the on duty officer when he responded to the attempted suicide of another MOS, a fellow sergeant, who he learned on arrival at the scene of the incident was his personal friend and former partner. Needless to say, the shock of that incident also left its mark on [Respondent]. All of these incidents combined have effected [Respondent]; effects that he is now addressing during his medical treatment.

Based on Respondent's having been found Guilty of official misconduct, acting in concert with Police Officer Ramos to commit robbery, failing to notify the Internal Affairs Bureau about Ramos' ongoing serious misconduct and throwing out marijuana from the window of an RMP, this Court has no alternative but to recommend that Respondent be DISMISSED from the Department.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JACOB SOLORIZANO  
TAX REGISTRY NO. 903306  
DISCIPLINARY CASE NO. 2011-6116

On his last three annual performance evaluations Respondent received an overall rating of 3.5 "Competent/Highly Competent". He has one Medal for Excellent Police Duty and one Commendation. [REDACTED]

Respondent has no prior disciplinary record.

For your consideration.



Amy J. Porter  
Assistant Deputy Commissioner – Trials